

JOSEPH P. RUSSONIELLO (CBN 44332)  
United States Attorney

BRIAN J. STRETCH (CABN 163973)  
Chief, Criminal Division

WADE M. RHYNE (CABN 216799)  
Assistant United States Attorney

1301 Clay Street, Suite 340S  
Oakland, California 94612  
Telephone: (510) 637-3693  
Facsimile: (510) 637-3724  
E-Mail: wade.rhyme@usdoj.gov

**FILED**

DEC - 2 2009

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

Attorneys for the United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
AUGUSTIN ORDAZ, )  
a/k/a "Augustin Ordaz-Villagomez," )  
 )

No. CR 09-00868 CW

AMENDED STIPULATION AND  
~~PROPOSED~~ PROTECTIVE ORDER  
REGARDING PRODUCTION OF  
CONFIDENTIAL DISCOVERY

Plaintiff, by and through its attorney of record, and the defendant, by and through his attorney of record, hereby stipulate and ask the Court to find as follows:

1. A federal grand jury has returned an indictment charging the defendant with possession with intent to distribute methamphetamine.

2. The government believes that the proposed protective order is necessary to preclude some discovery materials, which may contain the identities of potential witnesses and/or cooperating witnesses or information from which those identities may be discovered, from being disseminated among members of the public and to the defendant. Specifically, the government believes that the proposed protective order will greatly reduce the possibility that individuals will

AM. STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER REGARDING  
CONFIDENTIAL DISCOVERY

1 misuse discovery materials to identify, intimidate, and/or harm witnesses and/or defendants.

2 3. Defendant and his defense counsel deny that any person would be endangered by  
3 the defendant's possession of any discovery material in this matter. The parties agree that no  
4 inference should be drawn about the defendant's dangerousness because of his agreement to  
5 enter into this stipulation and be subject to the protective order.

6 4. The parties agree that the following conditions, if ordered by the Court, should  
7 serve the government's interest in protecting witnesses, defendants, and other members of the  
8 community and reduce the risk of retribution against cooperating witnesses by precluding the  
9 circulation of these documents and digital media (e.g., CD-ROMs, DVDs, and digital  
10 photographs) throughout the prison system and the community, while permitting the defense to  
11 obtain discovery required by Federal Rule of Criminal Procedure 16 and the United States  
12 Constitution. Accordingly, the parties jointly request that the Court order as follows:

13 a. For purposes of this Order, the term "defense team" refers to: (1) the  
14 counsel of record for the defendant; (2) defense investigators assisting the defense team with this  
15 case; (3) employees of the defense team's law office; and (4) any expert witnesses who may be  
16 retained or appointed by the defense team. For purposes of this Order, a term "defense team"  
17 does not include the defendant.

18 b. The government is authorized to provide the defense team with discovery  
19 required by F.R.Cr.P. 16 and may, in its discretion, designate any discovery produced as  
20 "Confidential Discovery" to be governed by the terms of this protective order. The government  
21 may designate discovery as confidential by marking such discovery as "CONFIDENTIAL" and  
22 shall produce such discovery on a document, CD, or DVD marked "WARNING: CONTENTS  
23 SUBJECT TO PROTECTIVE ORDER. UNAUTHORIZED COPYING OR VIEWING IS  
24 SUBJECT TO PUNISHMENT AS CONTEMPT OF COURT."

25 c. The defense team shall not permit anyone, including the defendant, to have  
26 possession of Confidential Discovery pursuant to this Order other than the defense team.

27 d. The defense team shall not divulge the contents of any Confidential  
28

1 Discovery provided pursuant to this Order to anyone other than the defendant. A defense team  
2 member may show Confidential Discovery to the defendant only in the physical presence of a  
3 defense team member, and may not permit the defendant to have physical possession of the  
4 Confidential Discovery.

5 e. The defense team shall not permit Confidential Discovery provided  
6 pursuant to this Order to be outside of the defense team's offices, homes, vehicles, or personal  
7 control. The defense team may take Confidential Discovery into a custodial facility to show it to  
8 the defendant, but, as explained above, the defense team must maintain physical possession of  
9 the Confidential Discovery and may not allow the defendant to have physical possession of the  
10 Confidential Discovery.

11 f. In the event that one of the parties files a pleading that references or  
12 contains Confidential Discovery or information therefrom, that filing must be made under seal.

13 g. The defense team shall return all Confidential Discovery provided  
14 pursuant to this Order to the government fourteen calendar days after any one of the following  
15 events, whichever occurs latest in time: dismissal of all charges against the defendant; the  
16 defendant's acquittal by court or jury; the conclusion of any direct appeal; the expiration of the  
17 time period for filing a motion pursuant to 28 U.S.C. § 2255; or the district court's ruling on any  
18 motion filed pursuant to 28 U.S.C. § 2255. In the event that the defense team has made notes or  
19 marks on the Confidential Discovery constituting work product the defense team shall return the  
20 materials to the government in a sealed container labeled "WORK PRODUCT-DESTROY."

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

h. After return of the materials, the government may destroy the Confidential Discovery.

IT IS SO STIPULATED.

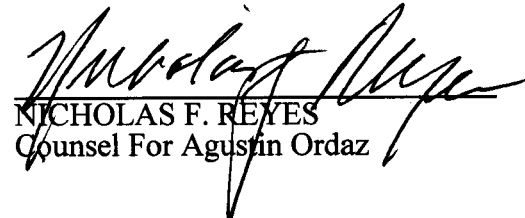
DATED: December 2, 2009

Respectfully submitted,

JOSEPH P. RUSSONIELLO  
United States Attorney

  
WADE M. RHYNE  
Assistant United States Attorney


DATED: 12-2-09

  
NICHOLAS F. REYES  
Counsel For Agustin Ordaz

~~PROPOSED~~ ORDER

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED: The government is hereby authorized, pursuant to Federal Rule of Criminal Procedure 16, to disclose discovery to the defense team and may designate discovery to be governed by this protective order as Confidential Discovery. The parties are hereby ordered to comply with the conditions set forth in paragraphs 4(a)-(h) of this stipulation and order pursuant to Federal Rule of Criminal Procedure 16(d)(1).

DATED: 12/2/09

  
HON. CLAUDIA WILKEN  
UNITED STATES DISTRICT COURT JUDGE